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May 11, 1999

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MAY 11 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Via Hand Delivery**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Ex Parte Presentations in CS Docket No. 95-184 and MM Docket No. 92-260

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206, the Building Owners and Managers Association International ("BOMA"), the Institute of Real Estate Management ("IREM"), the International Council of Shopping Centers ("ICSC"), the National Apartment Association ("NAA"), the National Association of Real Estate Investment Trusts ("NAREIT"), the National Multi Housing Council ("NMHC"), and the National Realty Committee ("NRC") (jointly, the "Real Estate Associations"), through undersigned counsel, submit this original and three copies of a letter disclosing an oral and written ex parte presentation in the above-captioned proceedings.

On May 11, 1999, the following representatives of the Real Estate Associations met with Royce Dickens, Eloise Gore, Carl Kandutsch, Cheryl Kornegay, John Norton, and Nancy Stevenson of the Cable Bureau:

Jim Arbury  
Megan Booth  
Gerard Lavery Lederer  
Roger Platt  
Matthew C. Ames

NMHC and NAA;  
IREM;  
BOMA;  
NRC; and  
Miller & Van Eaton, P.L.L.C.

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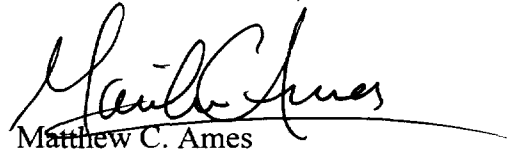
The meeting addressed treatment of exclusive and perpetual contracts between video programming providers and building owners. The attached written ex parte presentation, which was given to the Commission staff members present, summarizes the matters that were discussed in the meeting. Commission staff members were also given copies of filings submitted by the Real Estate Associations since publication of the Second Further Notice of Proposed Rulemaking in the above-captioned proceedings.

Please contact the undersigned with any questions.

Very truly yours,

**Miller & Van Eaton, P.L.L.C.**

By

  
Matthew C. Ames

cc: Royce Dickens  
Eloise Gore  
Carl Kandutsch  
Cheryl Kornegay  
John Norton  
Nancy Stevenson

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**THE REAL ESTATE INDUSTRY URGES THE COMMISSION  
NOT TO REGULATE RELATIONSHIPS BETWEEN PROPERTY OWNERS  
AND VIDEO PROGRAMMING PROVIDERS**

- The Real Estate Associations<sup>1</sup> support exclusive contracts because they may be the only way to ensure that MDU residents receive the services they want. For example, exclusive contracts are often necessary to allow small providers to compete against incumbents.
- The Commission should not abrogate existing exclusive agreements, and any time limits on future exclusive contracts must allow providers to recover their investment. Otherwise, building owners could find that their options for meeting residents' needs are limited.
- Competition from multiple video programming providers within MDU's will develop when revenue streams justify the investment. Until then, the providers will seek to protect themselves through exclusive contracts.
- The Real Estate Associations oppose "perpetual" contracts because they restrict competition and prevent residents from receiving the benefits of new technologies. But the Real Estate Associations do not favor Commission interference with existing contracts.
- State mandatory access laws are the real barrier to competition in MDU's because they favor large incumbents. Although the Commission has chosen not preempt such laws, it should not introduce the concept at the federal level.
- Mandatory sharing of wiring raises Fifth Amendment concerns, and might discourage property owners from installing their own infrastructure. Mandatory sharing would also undercut exclusive agreements. Consequently, any sharing requirement must be carefully tailored.

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<sup>1</sup> The Building Owners and Managers Association International, the Institute of Real Estate Management, the International Council of Shopping Centers, the National Apartment Association, the National Association of Real Estate Investment Trusts, the National Multi Housing Council, and the National Realty Committee.